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Kristen Taylor

Florida A&M University College of Law

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IMPROVING SUBSTANTIVE AND PROCEDURAL PROTECTIONS FOR INDIGENOUS RIGHTS IN REDD+ PROJECTS: POSSIBLE LESSONS FROM BRAZIL

Kristen Taylor*

ABSTRACT

Nations around the world are beginning to acknowledge that climate change is an imminent threat to our planet and are responding with mitigation efforts. REDD+ (reducing emissions from deforestation and degradation plus) may be a way to minimize the deforestation that has led to the increased greenhouse gas emissions causing a change in our global climate. Although REDD+ is one the leading proposals to address climate change, it lends itself to potentially harmful effects on indigenous people, if the regulating nation does not possess adequate policy for protections of their indigenous peoples. Indigenous peoples face the challenge of safeguarding access to their lands and the surrounding forests. In Brazil, there have been issues regarding who has property rights to the rainforest, and because of Brazil's current legal framework, ambiguity regarding land tenure rights is the greatest obstacle to overcome when implementing successful REDD+ programs. As demonstrated in Colombia, the enumeration of specific environmental rights in their newest Constitution has effectively acknowledged indigenous rights and specific autonomy in land rights to their communities, thus requiring equal treatment and guaranteeing respect for indigenous cultures. Is constitutional recognition of indigenous peoples' land tenure rights enough to ensure a successful implementation of REDD+ programs? If so, can Brazil effectively balance the need to implement climate change mitigation efforts while upholding indigenous people's sacred ties to their lands? This paper examines how Brazil can prepare itself for an Indigenous REDD+ by modeling the implementation and enforcement of its current legal framework after that of Colombia.

Keywords: REDD+, indigenous rights, land grab, Brazilian Amazon, deforestation, Kayapó

* JD (Florida A&M University College of Law); B.B.A (Georgia State University). Special thanks to Randall S. Abate, Professor of Law and Director of the Center for International Law and Justice at Florida A&M University College of Law, for his treasured advice and support in the preparation of this article.

1. INTRODUCTION

Tropical deforestation is a major source of greenhouse gas emissions, estimated to contribute about twenty per cent of global emissions.¹ Indigenous peoples are among the most vulnerable to the impacts climate change.² In addition, their communities are among those who contribute least to carbon emissions, yet climate change is disrupting the ecosystems on which their traditions and livelihoods depend.³ Like China, Brazil is a developing country that will play a key role in averting dangerous climate change.⁴ In the past seven years, Brazil has emerged as a leader among developing countries in climate change policy.⁵ Brazil has received this recognition by making significant strides in reducing deforestation in the Amazon rainforest.

In the Brazilian Amazon, deforestation contributes to 75 per cent of Brazil's global greenhouse gas emissions, which is 2.5 per cent.⁶ Since its inception, REDD+ is the forerunner to address this problem. However, REDD+ projects have social impacts that depend on the level of policy implemented by the regulating nations.⁷ Historically, Brazil has struggled over who has property rights to the rainforest, and this struggle has led to the exclusion of indigenous peoples.⁸ When trying to implement REDD+ in Brazil, because of the current legal framework, uncertainty over who has land ownership is the greatest challenge in implementing successful REDD+ programs.⁹

Part I of this paper discusses the rich history of the Kayapó tribe. It examines how the Kayapó came to be one of the most influential indigenous tribes in the Brazilian Amazon. It also explores the current state of the

1 In Brazil, deforestation in the amazon is responsible for about seventy-five percent of the country's greenhouse gas emissions each year. H M Osofski & L K McAllister, *Climate Change Law and Policy* (Aspen Publishers 2012) 243.

2 Annelie Fincke, 'Indigenous Peoples and Climate Change/ REDD: An Overview of Current Discussions and Main Issues' *Int'l Union for Conservation of Nature* (March 2010) <www.iucn.org/about/work/programmes/social_policy/sp_themes_ip/?5709/indigenousredd-plus> accessed September 15 2014.

3 *ibid.*

4 Osofsky & McAllister (n 1) 242.

5 *ibid* 243.

6 P Moutinho & S Schwartzman, 'Tropical Deforestation and Climate Change' (2005) 7 Amazon Institute for Environmental Research <www.edf.org/sites/default/files/4930_TropicalDeforestation_and_ClimateChange.pdf> accessed September 16 2014.

7 C Van Dam, 'Indigenous Territories and REDD in Latin America: Opportunity or Threat' (March 11 2011) MDPI 396 <www.mdpi.com/1999-4907/2/1/394/pdf> accessed September 15 2014.

8 *ibid.*

9 S Bacz, 'The Right REDD Framework: National Laws That Best Protect Indigenous Rights in a Global REDD Regime' (2011) 80 Fordham L. Rev. 827.

Kayapó's involvement in preventing deforestation and REDD+. Part II analyzes the existing international and domestic legal protections for indigenous peoples. Part III examines Brazil's enforcement of its domestic laws to protect indigenous peoples rights, how failing to provide effective enforcement can negatively affect REDD+ implementation, and how Brazil's experience stands in contrast to Colombia's effective enforcement of its domestic laws protecting indigenous peoples. Part IV proposes changes Brazil can make in moving towards an indigenous REDD+. It proposes that Brazil should model the implementation and enforcement of its domestic indigenous protections after Colombia. Brazil should achieve this goal by focusing on enhanced substantive and procedural protections, including better execution of free, prior, and informed consent; improved access to information and input from the indigenous tribe's leaders; and better enforcement of their land tenure rights. Furthermore, in order for REDD+ to be fully successful in the Brazilian Amazon, Brazil needs to follow Colombia's approach to REDD+ pilot projects.

2. HISTORY OF THE KAYAPÓ

The Kayapó's Forest-Dependent Culture and Struggle for Land Autonomy

The Kayapó territory¹⁰ is located in the southwest region of the Brazilian Amazon Basin.¹¹ The Kayapó land is one of the largest protected areas of tropical rainforest in the world, inhabited by about 9,000 indigenous people living in nine villages ranging in population from one hundred to one thousand.¹² Most members of the Kayapó cannot read or write and still follow a largely "survival way of life in forty-four villages linked only by rivers and all-but-invisible trails."¹³ The 1988 Brazilian Constitution acknowledges the Kayapó tribe as full citizens with all rights to the land they have occupied for thousands of years.¹⁴ Over time and one of the most impressive aspects of the Kayapó is that they have succeeded in working with the modern Brazilian government while maintaining the integrity and traditions of their ancient culture.¹⁵

10 The territory is located in the southern Pará and northern Mato Grosso states of Brazil. Darrell A. Posey, *Kayapó Ethnoecology and Culture* (Kristina Plenderleith edn, 2002) 33.

11 *ibid.*

12 M Dowie, *Conservation Refugees: The Hundred-Year Conflict Between Global Conservation and Native Peoples* (2009) 202.

13 C Brown, 'Kayapó Courage' *National Geographic* (January 2014) <<http://ngm.national-geographic.com/2014/01/kayapo/brown-text>> accessed September 15 2014.

14 *ibid.*

15 Dowie (n 12) 206.

The Kayapó are perhaps most known for being “ferocious” defenders of their territory. Since the 1980’s they have been fighting off encroaching soy farmers, cattle ranchers, and gold miners.¹⁶ In addition, their lands are continuously threatened by deforestation caused by fires burning massive areas for agriculture production.¹⁷ Moreover, illegal logging and dam construction are other serious threats to the Kayapó land.¹⁸ Since most of the tribe’s chiefs have acquired a fluency in Portuguese, the Kayapó were extremely influential in the creation of the 1988 Brazilian Constitution by helping to get indigenous rights written into it and eventually secured legal recognition of their territory.¹⁹ Although the Kayapó have won legal recognition of land rights to their territories, legal parameters for resource use on their lands remain vague.²⁰ Since there are no clear rules or standards, the Kayapó have had to form alliances with regional, national, and international actors.²¹

REDD+ and Climate Change

Deforestation in tropical countries has proven difficult to control, partly because of the weakness of national legal and regulatory institutions for environmental protection.²² Many believe that an important part of the solution to mitigate climate change is to strengthen the land and resource rights of indigenous peoples whose wellbeing and survival is tied to their forests.²³ Although most national governments claim ownership over the forests in their countries, the real people who deserve ownership over the lands are the indigenous peoples who have a deep cultural and historical connection to the land.²⁴

Forests absorb carbon dioxide from the atmosphere. Once absorbed, the carbon will remain sequestered in the trees as long as they are not cut down or destroyed.²⁵ If a forest is destroyed, the carbon that was once sequestered

16 *ibid* 203.

17 L Bowen, ‘Brazil’s Kayapó: Powerful Allies in the Amazon’ *Conservation International* (May 19, 2008) <[HTTP://SPIO.CONSERVATION.ORG/FMG/ARTICLES/PAGES/BRAZIL_KAYA-PO_ALLY_IN_AMAZON.ASPX](http://spio.conservacion.org/fmg/articles/pages/brazil_kaya-po_ally_in_amazon.aspx)> accessed September 16, 2014.

18 *ibid*.

19 Brown (n 13).

20 S Schwartzman & B Zimmerman, ‘Conservation Alliances with Indigenous Peoples of the Amazon’ *Conservation International* (7 February 2005) 722 <www.esf.edu/efb/gibbs/efb413/Schwartzman-Zimmerman.2005.pdf>.

21 *ibid*.

22 Osofsky & McAllister (n 1) 243.

23 *ibid*.

24 *ibid*.

25 M Bapna, ‘What is REDD? Climate Change and the Challenge of REDD’ *World Resources Institute* (Sept. 3, 2010) <www.wri.org/stories/2010/03/forests-climate-change-and-challenge-redd> accessed September 15, 2014.

in the trees is then released into the atmosphere.²⁶ REDD is an international mechanism to help stop deforestation and climate change.²⁷ REDD is extremely important because without a solution to reduce deforestation, there will not be a solution to mitigating climate change. REDD frameworks aim to achieve this goal by paying countries, with sizable amounts of forest, money to go towards efforts that will conserve their trees and keep their forests standing.²⁸ In return, the countries pay for carbon credits as a way to achieve their national emission goals.²⁹ REDD has evolved into REDD+ by including additional incentives to increase conservation and enhancement of carbon stocks and introduce the principles of reforestation and afforestation into the REDD mechanism.³⁰

Brazil is fast becoming a world leader in developing national and sub-national REDD+ frameworks.³¹ In order for the REDD+ framework to be an effective approach in mitigating climate change, local farmers, national governments and the private sector will need to work together.³² Moreover, the needs and rights of indigenous peoples, along with local communities, will need to be respected.³³

3. EXISTING LEGAL PROTECTIONS FOR INDIGENOUS PEOPLES

International and domestic legal frameworks exist in Brazil to protect indigenous peoples and their lands from exploitation. In order to ensure that the indigenous peoples' lands are protected from exploitation, the current international and domestic legal frameworks in Brazil should involve action by national governments, corporations, NGOs, and individuals around the world all working together.³⁴

Domestic Laws

Brazil was one of the first countries in the Amazon Basin to recognize the rights of its indigenous peoples.³⁵ A major improvement in the 1988

²⁶ Baez (n 9) 822.

²⁷ 'An Introduction to REDD' *The REDD Desk*, 2014 <<http://theredddesk.org/resources/an-introduction-redd>> accessed October 22 2014.

²⁸ Baez (n 9) 827.

²⁹ *ibid.*

³⁰ *ibid.*

³¹ A Long, 'REDD+ and Indigenous Peoples in Brazil', in Randall S. Abate & Elizabeth Ann Kronk (eds), *Climate Change and Indigenous Peoples: The Search for Legal Remedies* (Edward Elgar Publishing, 2013) 151.

³² 'An Introduction to REDD' (n 27).

³³ *ibid.*

³⁴ Osofsky & McAllister (n 1) 63.

³⁵ Long (n 31) 155.

Brazilian Constitution is the elimination of assimilationist clauses that were written into the previous Constitutions.³⁶ The new Constitution no longer requires indigenous peoples to be “harmoniously integrated into the national communion” before the government will respect their indigenous traditions.³⁷ The 1988 Brazilian Constitution states that indigenous peoples have rights to their own “social organization, customs, languages, beliefs and traditions, and rights to the lands they traditionally occupy.”³⁸ Thus, the 1988 Constitution of Brazil established very strong legal protection of indigenous peoples’ rights, including preservation of customs and a firm establishment of land rights through an official demarcation of the territories of each tribe.³⁹ However, these explicit rights are not always upheld or properly executed. Article 231 of Brazil’s Constitution, paragraph five, contains an exception in which the indigenous peoples can be expelled from their lands in the “interest of the sovereignty of the country,” so long as it is agreed to by the national congress.⁴⁰

The Brazilian Indian Foundation⁴¹ (FUNAI) is a governmental agency responsible for indigenous peoples’ affairs, and is in charge of demarcating and registering indigenous peoples’ lands.⁴² Under past national Constitutions, FUNAI was considered the only legal institution that could represent or defend native peoples.⁴³ Land demarcation, sales of mineral rights and FUNAI officials could only legally conduct lumber, judicial proceedings, and even labor contracts and agricultural sales.⁴⁴ The government owns all areas of rainforest inhabited by indigenous people, meaning that these lands are publicly owned.⁴⁵ Public ownership means that government agencies such as FUNAI are responsible for allocating, demarcating, and registering indigenous lands.⁴⁶ In order for indigenous peoples’ land rights to be recognized, the communities must apply for title through FUNAI.⁴⁷

FUNAI began as an exclusive mediator of indigenous peoples’ interest in all interactions with non-indigenous society, and now serves more of a supportive and facilitative role to tribes that are actively engaged in addressing

36 K Warren & J Jackson, *Indigenous Movements, Self-Representation, and the State in Latin America* (University of Texas Press, 2002) 268.

37 *ibid.*

38 *ibid.*

39 Long (n 31) 155.

40 Constituição Federal [C.F.] [Constitution] art. 231, para. 5 (Brazil).

41 Fundação Nacional do Índio (FUNAI) in Portuguese.

42 Posey (n 10) 223.

43 *ibid.*

44 *ibid.*

45 *ibid.*

46 Baez (n 9) 844.

47 Long (n 31) 157.

threats to their rights and environments.⁴⁸ However, despite the good objectives that FUNAI sets out to achieve, it has consistently been “plagued by a lack of financial resources and personnel.”⁴⁹ Moreover, it has faced continual political pressure arising from commercial interests eager to seize and exploit indigenous resources, thus enforcement by FUNAI has generally remained weak.⁵⁰

In addition to the Constitution and FUNAI, Brazil announced a National Policy on Climate Change that became effective in 2009.⁵¹ The key objectives of this policy are to make the nation’s socio-economic development compatible with the protection of the climate system, while reducing anthropogenic greenhouse gas emissions.⁵² Most importantly, the National Policy on Climate Change aims to consolidate and expand legally protected lands while providing an incentive that promotes reforestation and recomposition of vegetation cover in degraded areas.⁵³ The policy includes a goal to cut emissions from Amazon deforestation by 80 per cent by 2020.⁵⁴

International Laws

International Labour Organization No. 169

International Labour Organization No. 169 is “a legally binding international instrument open to ratification by all of the world’s countries, which deals specifically with the rights of indigenous and tribal peoples.”⁵⁵ In 1989, the International Labour Organization adopted Convention No. 169, which requires tribal and indigenous peoples’ participation in negotiations concerning any development on their lands.⁵⁶ ILO 169 constitutes the only accepted source of “hard law” that specifically addresses the rights of indigenous peoples, in the ratifying states, and thereby, has significantly impacted the broader development of indigenous peoples’ human rights.⁵⁷

While ILO 169 does not provide an explicit definition of “indigenous peoples,” it does provide criteria that are helpful in identifying the people

⁴⁸ *ibid* 156.

⁴⁹ *ibid*.

⁵⁰ *ibid* 156-57.

⁵¹ Osofsky & McAllister (n 1) 253.

⁵² *ibid* 254.

⁵³ *ibid*.

⁵⁴ *ibid*.

⁵⁵ ‘Convention No. 169’ *Int’l Labour Org.* <www.ilo.org/dyn/normlex/en/f?p=NORMLEX_PUB:12100:0::NO:12100:P12100_ILO_CODE:C169> accessed Sept. 18, 2014.

⁵⁶ Lawrence Watters, *Indigenous Peoples, the Environment and Law* (2004) 161.

⁵⁷ L Miranda, ‘Introduction to Indigenous Peoples’ Status and Rights Under Int’l Human Rights Law’, in Randall S. Abate & Elizabeth Ann Kronk (eds), *Climate Change and Indigenous Peoples: The Search for Legal Remedies* (Edward Elgar, 2013) 45.

it is meant to protect.⁵⁸ ILO 169 recognizes the “aspirations of indigenous peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions....”⁵⁹ Currently, there are twenty-two countries that have ratified ILO 169.⁶⁰ Brazil ratified ILO 169 in 2002.⁶¹

Article 5 of the ILO 169 treaty affirms indigenous peoples’ rights to cultural integrity.⁶² Moreover, Article 6 of the treaty requires that the state discuss any new legislation or programs with the affected peoples and how the particular content of law will affect them directly.⁶³ Furthermore, a series of Articles, 13 through 19, promote indigenous peoples’ rights over their ancestral lands and resources.⁶⁴

ILO 169 was drafted with the idea that indigenous peoples are permanent societies and deserved communal lands. Article 15 requires the state to consult with indigenous peoples in an effective approach.⁶⁵ Such consultation could include participation in the decision making process, when implementing REDD+, so that indigenous peoples can offer their input on the development projects, since it will affect their lands and people.

United Nations Declaration on the Rights of Indigenous Peoples

In addition to ILO 169, indigenous peoples enjoy protections afforded by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP was adopted by the United Nations Human Rights Counsel General Assembly in September 2007⁶⁶ and addresses indigenous peoples’ right to self-determination and to political, economic, governmental and cultural recognition.⁶⁷ UNDRIP represents over two decades worth of work by indigenous peoples, governments, NGOs, and inter-governmental organizations in fashioning “a comprehensive transnational bill of rights applicable to indigenous peoples.”⁶⁸

58 ‘Convention No. 169’ (n 55).

59 *ibid.*

60 *ibid.*

61 *ibid.*

62 *ibid.*

63 S Kravchenko & J Bonine, *Human Rights and the Environment: Cases, Law and Policy* (Carolina Academic Press, 2009) 163.

64 Convention No. 169’ (n 55) art. 13-19.

65 *ibid* art. 15.

66 ‘Declaration on the Rights of Indigenous Peoples’ *United Nations Permanent Forum on Indigenous Issues* <[HTTP://UNDESADSPD.ORG/INDIGENOUSPEOPLES/DECLARATIONON-THERIGHTSOFindigenouspeoples.aspx](http://undesadspd.org/indigenouspeoples/declarationontherightsofindigenouspeoples.aspx)> accessed September 20, 2014.

67 Kravchenko & Bonine (n 63) 157.

68 Miranda (n 57) 51.

Throughout the drafting of UNDRIP, The Working Group actively solicited the participation of indigenous peoples' representatives by circulating working papers for comments not only to governments, but also to the indigenous communities.⁶⁹ Although the declaration is non-binding, it confirms the international community's commitment to protecting indigenous peoples, and may develop into customary law or a treaty in the future.⁷⁰ This declaration declares that states shall consult with and obtain free, prior, and informed consent of indigenous communities before making any decision affecting their lands.⁷¹ UNDRIP is said to "represent a shift away from the state-centered approach of indigenous rights, with the goal of promoting a more inclusive and consultative relationship with indigenous people."⁷² Similar to ILO 169, Brazil is a signatory to this declaration, thus bound by its terms.⁷³

While UNDRIP fulfills its goal of being executed in the best interest of indigenous peoples, it does have a controversial aspect. The "duty of the state to obtain the free, prior, and informed consent (FPIC) of the indigenous community before approving any project that may affect their land resources" is a sensitive aspect of the declaration because "one of the major threats to the physical and cultural survival of indigenous peoples lies in the increasing focus on so called 'under-developed regions which overlap with indigenous areas....'"⁷⁴ Moreover, UNDRIP's protections can create a tension between the interest of indigenous peoples and the state's interest in economic development.⁷⁵

The idea of FPIC is pervasive throughout UNDRIP: "no relocation shall take place without free, prior, and informed consent;"⁷⁶ "state shall consult and cooperate in good faith...in order to obtain free, prior, and informed consent;"⁷⁷ "states shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process...."⁷⁸ "Free" means that indigenous peoples should be free

69 *ibid* 45.

70 'United Nations Declaration on the Rights of Indigenous Peoples' (March 2008) <www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf> accessed October 15, 2014.

71 *ibid*.

72 J Crawford, *Brownlie's Principles of International Law* (2012) 649.

73 'Voting Record Search' *unbisnet* <[HTTP://UNBISNET.UN.ORG:8080/IPAC20/IPAC.JSP?PRO-FILE=VOTING&INDEX=.VM&TERM=ARES61295](http://unbisnet.un.org:8080/IPAC20/IPAC.JSP?PRO-FILE=VOTING&INDEX=.VM&TERM=ARES61295)> accessed September 21, 2014.

74 S Errico, 'The Draft UN Declaration on the Rights of Indigenous Peoples: An Overview' (2011) 7 *Human Rights. L. Rev.* (2007) 753.

75 *ibid*.

76 'United Nations Declaration on the Rights of Indigenous Peoples' (n 70) 6.

77 *ibid* 8.

78 *ibid* 10.

from force, coercion, intimidation, or manipulation by the government or company.⁷⁹ “Prior” indicates that before a government begins to allocate land for particular land uses and prior to approval for specific projects, the indigenous community that could be affected must be given enough time to consider all information and make a decision.⁸⁰ “Informed” represents that the indigenous community must be given all of the relevant information needed to make a decision about whether to agree to the project.⁸¹ Moreover, the information provided must be in a language in which they can easily understand, through an efficient means, and include access to independent information and experts on law and technical issues.⁸² Finally, “consent” requires that the people involved in the project allow indigenous communities to approve or disapprove the project at every stage, and this right to give or withhold consent is “the most important difference between the rights of indigenous peoples and the other project-affected peoples.”⁸³

Although UNDRIP is “soft law” and not legally binding, it provides an influential array of protections for indigenous peoples, these protections could be considered customary international law because a substantial number of member states agree to its objectives and are signatories to this declaration.⁸⁴ On the other hand, it will take some time to reach customary international law status because it was just recently drafted in 2007. Nonetheless, UNDRIP has impressive support from indigenous communities and NGO’s who recognize the need for the human rights protections included in the declaration.⁸⁵

American Convention on Human Rights

The Organization of American States (OAS) consists of thirty-five independent states, including Brazil. It entered into force in December 1951 and was established with an objective to “promote solidarity, collaboration, and defend sovereignty, territorial integrity, and independence” amongst the member states.⁸⁶ The OAS member states incorporated the American Con-

79 C Hill, ‘Guide to Free Prior and Informed Consent’ (2010) 8 <<http://resources.oxfam.org.au/pages/view.php?ref=528>> accessed October 15, 2014.

80 *ibid.*

81 *ibid.*

82 *ibid.*

83 *ibid.*

84 S Anaya, *International Human Rights and Indigenous Peoples* (Oxford University Press 2009) 79.

85 *ibid.*

86 ‘Organization of American States’ <www.oas.org/en/about/who_we_are.asp> accessed November 10, 2014)

vention on Human Rights into The Charter.⁸⁷ Article 21 of the American Convention gives indigenous peoples the right to property and acknowledges their right to the use and enjoyment of property.⁸⁸ However, this right may be subordinated in the best interest of the state.⁸⁹ The right to property is enforced under Article 25's right to judicial protection when an indigenous community's access to use and enjoy their property has been unfairly restricted and the state has not taken proper action to enforce their rights. There are two very important cases from the Inter-American Court of Human Rights⁹⁰ that help to illustrate this principle. These cases are *Mayagna Awas Tingni Community*⁹¹ v. *Nicaragua* and *Saramaka People v. Suriname*⁹². In both cases, the state had granted concessions for the exploration and extraction of natural resources on lands within indigenous territories.

In *Awas Tingni v. Nicaragua*, the indigenous community filed a petition requesting to stop Nicaragua from granting a logging concession on their land.⁹³ Nicaragua argued that part of indigenous community's lands belonged to the state and that the indigenous peoples had no real property title deed to the land at issue.⁹⁴ The court concluded that, under Article 21 of the American Convention, indigenous peoples' rights to property are protected within the framework of communal property, and that the Awas Tingni community did possess the land in question.⁹⁵ The court concluded that Nicaragua violated Article 21 of the American Convention when they granted a concession for logging and road building on the Awas Tingni's land without first securing the indigenous communities' consent.⁹⁶ Moreover, the court held that Nicaragua violated the members of the Awas Tingni community's right to use and enjoy their property.⁹⁷

Similarly, in *Saramaka v. Suriname*, the Inter-American Court of Human Rights found that indigenous communities have the right to own the natural resources they have traditionally used within their territories just as they have a right to own the land they have traditionally occupied.⁹⁸ The

87 'American Convention on Human Rights' <www.oas.org/DIL/TREATIES_B-32_AMERICAN_CONVENTION_ON_HUMAN_RIGHTS.HTM> accessed October 15, 2014.

88 *ibid.*

89 *ibid.*

90 The Inter-American Court of Human Rights is responsible for enforcing and interpreting the American Convention on Human Rights.

91 [2001] Inter-Am. Ct. H.R. (ser. C) No. 79.

92 [2007] Inter-Am. Ct. H.R. (ser. C) No. 172.

93 *Awas Tingi* (n 91).

94 *ibid.*

95 *ibid.*

96 *ibid.*

97 *ibid.*

98 *Saramaka* (n 92).

court acknowledged that protecting these rights are essential to the physical and cultural survival of indigenous peoples.⁹⁹ The court also recognized several safeguards, which the state must follow, that ensure the effective participation of the Saramaka people, in conformity with their customs and traditions, regarding any development or investment plan within their territory.¹⁰⁰ The safeguards also state that the state must guarantee that the Saramaka will receive a reasonable benefit from any such plan within their territory.¹⁰¹ Finally, the safeguards ensure that the state does not issue a concession within the Saramaka territory until independent and environmental social impact study was completed and approved.¹⁰²

4. COMPARATIVE ANALYSIS OF BRAZIL'S AND COLOMBIA'S IMPLEMENTATION OF INDIGENOUS PEOPLES' PROTECTIONS

In order to safeguard the success of REDD+ pilot projects, effective national laws that protect indigenous peoples' rights are necessary. Implementing an indigenous REDD+ project will need to include cultural sensitivity and "fine-grained contextual understanding of the indigenous peoples who live in the regions that may be affected."¹⁰³

Colombia's Constitution is remarkably progressive in its guarantees of indigenous rights. Although previously Colombia's governments have tended to focus on the need for economic growth and environmental protections have been a low priority, this approach has begun to change in recent years.¹⁰⁴ Colombia is now viewed a pioneer and is one of a few countries to have environmental rights specifically enumerated in its Constitution.¹⁰⁵ In 1991, Colombia adopted a new Constitution in it, which recognized the importance of environmental protection and sustainable development.¹⁰⁶ Moreover, almost alone in Latin America, Colombia, through the execution

99 *ibid.*

100 *ibid.*

101 *ibid.*

102 *ibid.*

103 Long (n 31) 151.

104 Colombia signed on to the "zero deforestation in the Amazon by 2020" pledge at COP 9 in 2008 and began preliminary work on REDD+ in 2009. 'REDD in Colombia' (*The Redd Desk* September 2013) <<http://theredddesk.org/countries/colombia/>> accessed September 15, 2014.

105 See Kravchenko & Bonine (n 63) 67.

106 P O'Brien, 'Participation and Sustainable Development in Colombia' (1995) 7 *European Rev. of Latin American and Caribbean Studies* <www.jstor.org/stable/pdfplus/25675674.pdf?acceptTC=true&jpdConfirm=true> accessed October 11, 2014.

of their new Constitution, has granted indigenous rights and specific autonomy in land rights to indigenous communities.¹⁰⁷ Furthermore, and one of the most important aspects of this new Constitution, it firmly prohibits discrimination and requires the State to proactively provide equal treatment and ensure respect for indigenous cultures.¹⁰⁸

Article 8 of the new Colombian Constitution establishes the obligation of the state and its citizens to protect the natural and cultural wealth of the country.¹⁰⁹ Additionally, in Articles 329 and 330, indigenous peoples' rights are to be provided by encouraging their participation in shaping the territories they occupy and preventing the exploitation of natural resources within those territories is recognized.¹¹⁰ Furthermore, Article 79 strengthens indigenous rights by asserting that they have a right to participate in decisions affecting the environment.¹¹¹ Although both Colombia and Brazil have similar indigenous rights explicit in their Constitutions, the Colombian Constitutional Court has routinely upheld the commitment of the above-mentioned Articles by consistently declaring laws unconstitutional if they do not adequately inform indigenous peoples of changes that may cause an impact on their communities.¹¹²

For example, in *Opinion SU-039 (1997)*, a case from Colombia's highest judicial body, the court held that indigenous peoples have a fundamental right to preserve the integrity of their community, and this fundamental right is ensured and made effective through the exercise of their right to participate in decisions that affect their community.¹¹³ Moreover, the court acknowledged that indigenous peoples have a fundamental right to be consulted regarding the participation of indigenous communities in decisions that may affect them in relation to the exploitation of natural resources on the lands they inhabit.¹¹⁴ Furthermore, the court concluded that these fundamental rights are essential to preserve the ethnic, social, economic and cultural integrity of indigenous communities and to ensure their survival as a social group.¹¹⁵ Therefore, Colombia's established legal framework, most importantly their enforcement of it, is the example Brazil should follow in

107 *ibid.*

108 Constitución Política de Colombia [C.P.] art. 13.

109 *ibid.*

110 *ibid* art. 329-30.

111 *ibid* art. 79.

112 O'Brien (n 106) 16.

113 Corte Constitucional [C.C.] [Constitutional Court], febrero 21, 1997, Sentencia SU-039/97, Gaceta de la Corte Constitucional [G.C.C.], <<http://www.corteconstitucional.gov.co/relatoria/1997/su039-97.htm>> accessed June 23, 2015.

114 *ibid.*

115 *ibid.*

order to adequately ensure that REDD+ projects do not violate indigenous peoples' rights.

To underscore how Colombia has better enforcement of indigenous peoples rights, indigenous territories in Colombia possess self-autonomy, meaning they are governed by their own authority and retain two seats in the Senate.¹¹⁶ Moreover, Colombia does a good job of enforcing, through national legislation and international treaties, the theory of free, prior, and informed consent.¹¹⁷ For example, in 2011 Colombia began to participate in a REDD+ Readiness Plan that has a grant of \$3.4 million to be put towards the readiness preparation.¹¹⁸ In order for the program to receive the grant, Colombia must ensure community participation in monitoring activities and to protect indigenous territories from "possible negative impacts associated with early REDD+ activities."¹¹⁹

Brazil has a domestic legal framework for indigenous rights, but they are rarely enforced.¹²⁰ Indigenous peoples' traditional knowledge and long history of sustainable forestry practices makes their participation very important to the success of REDD+ in Brazil.¹²¹ In addition, Brazilian laws relating to deforestation in the Amazon are very strict, but have often not been carried out.¹²² Furthermore, although Brazilian law has developed into becoming more conscious of indigenous interests in recent decades, it still has lingering bits of an abusive and discriminatory past.¹²³ These factors are the top contributors to the lack of effective enforcement of indigenous peoples' rights.

Brazil is at the forefront of addressing the climate change problem, however, the country stands at crossroads regarding its approach to three major related issues: addressing climate change, protecting the Amazon forests and guaranteeing the rights of indigenous peoples.¹²⁴ Although tropical deforestation is major source of greenhouse gas emissions (GHG) in Brazil, it has been difficult to control because of the weakness of national legal and regulatory institutions for environmental protections.¹²⁵ Moreover, in Brazil, deforestation is closely linked to agricultural exports, which tend to be sig-

116 O'Brien (n 106) 26.

117 *ibid.*

118 'REDD in Colombia' (n 104).

119 As of this writing, all of these conditions have not been met and the funds have not yet been disbursed. *ibid.*

120 *ibid.*

121 Long (n 31) 152.

122 Osofsky & McAllister (n 1) 250.

123 Long (n 31) 156.

124 *ibid.* 152.

125 Osofsky & McAllister (n 1) 243.

nificant in the development of their national economy.¹²⁶

Indigenous peoples' traditional knowledge and long history of sustainable forestry practices makes their participation very important to the success of REDD+ in Brazil.¹²⁷ Brazil has a domestic legal framework for indigenous rights, but they are rarely enforced.¹²⁸ In addition, Brazilian laws relating to deforestation in the Amazon are very strict, but have often not been carried out.¹²⁹ Furthermore, although Brazilian law has developed into becoming more conscious of indigenous interests in recent decades, it still has lingering bits of an abusive and discriminatory past.¹³⁰ These factors are the top contributors to the lack of effective enforcement of indigenous peoples' rights.

Unlike Colombia, which rejects the protectionist approach and enforces indigenous people's rights as being inalienable from their land, Brazil's legal framework has a more protectionist approach in which it is assumed that indigenous peoples are incapable of protecting themselves and their resources.¹³¹ However, the 1988 Brazilian Constitution has recognized some indigenous rights to land and resources of the country.¹³² Article 231 of the Constitution states that "Indians" are entitled to their original rights to the lands they have traditionally inhabited, and it is the government's responsibility to "demarcate them, protect and ensure respect for all of their property."¹³³ Nonetheless, Article 231 contains an exception where indigenous peoples can be expelled from their land if it is in the best interest of the country.

FUNAI is another area in which Brazil has not been very successful in enforcing what it was created to achieve. FUNAI is in charge of demarcating and registering indigenous lands; however, it has not been able to fully protect indigenous communities that have in fact been granted demarcation from the dangers of outside encroachments.¹³⁴ On the other hand, the Brazilian federal government has attempted to restrict illegal logging in the Amazon and has stated its intention to establish a licensing system for rural properties on indigenous lands that would enable documentation of ille-

126 *ibid.*

127 Long (n 31) 152.

128 *ibid.*

129 Osofsky & McAllister (n 1) 250.

130 Long (n 31) 156.

131 D Shelton & A Wali, 'Indigenous Land Tenure and Tropical Forest management in Latin America' (1994) 485 *Switz. Inst. of Science* <www.jstor.org/stable/pdfplus/4314265.pdf?&acceptTC=true&jpdConfirm=true> accessed October 20, 2014.

132 *ibid.*

133 *Constituição Fed. Brazil* (n 40) art. 231.

134 Long (n 31) 158.

gal forest clearings.¹³⁵ Nonetheless, although some demarcation efforts and increased federal protection of indigenous interests have been successful, ranchers, miners and other commercially motivated Brazilians continue to “invade and otherwise exploit indigenous lands.”¹³⁶ The unfortunate result is indigenous peoples are not able to claim title to their traditionally occupied lands, thus hindering them from being able to benefit from any REDD+ program.¹³⁷

Although Brazil has ratified the binding treaty of ILO No. 169 and enumerated the protections granted from it into their Constitution, there is major caveat that under the authority of the Brazilian Constitution, Congress can limit any international agreement that “gravely compromises or weighs on the national patrimony.”¹³⁸ This limitation on Brazil’s ability to enforce ILO No. 169 permits a disparity between what substantive rights Brazil aspires to provide for its indigenous populations and what procedural rights are available when human and environmental rights have been violated.

Notwithstanding Brazil’s increasing role for enforcement of laws against deforestation, many of their national laws and policies that stimulate economic development, such as cattle ranching, soybean farming, and the quest to develop biofuels, are contributing to the high rate of deforestation.¹³⁹ The effectiveness of Colombia’s constitution and the enforcement of indigenous peoples rights guarantee that REDD+ projects will not violate their land rights. Thus, Brazil should use Colombia as a model when evaluating how to create an Indigenous REDD+.

5. PROMOTING INDIGENOUS RIGHTS IN REDD+: LESSONS FROM COLOMBIA ON ENFORCEMENT

In Brazil, since domestic enforcement has been weak and international protections have gone overlooked, indigenous rights can be protected through modeling their procedural and substantive protections after Colombia. Land ownership and tenure of indigenous peoples must be expanded and receive better acknowledgement prior to any REDD+ agreements in

135 Osofsky & McAllister (n 1) 250.

136 Long (n 31) 157.

137 See S Anaya & R Williams, Jr., ‘The Protection of Indigenous Peoples’ Rights over Lands and Natural Resources Under the Inter-American Human Rights System’ (2001) 14 *Harvard Human Rights Journal* 33.

138 See *Constituição Fed. Brazil* (n 40).

139 Osofsky & McAllister (n 1) 251.

order to prevent exacerbation of potential land conflict that may result from increased economic value attached to forest lands enrolled in REDD+.¹⁴⁰ Moreover, procedural protections, such as free, prior, and informed consent, can effectively mitigate the potential risks of REDD+ projects to indigenous peoples by ensuring that indigenous peoples understand and approve the terms of any agreements they enter into. Furthermore, an access to justice mechanism, within FPIC as available through better enforcement of indigenous rights, also is needed to provide an additional level of accountability.

Land Tenure Protections

As REDD+ develops into a very important part of mitigating climate change, the potential environmental and social consequences of REDD+ (other than carbon storage) have become the main points of discussion.¹⁴¹ Displacement of indigenous communities due to inadequate land tenure protections is one of the social consequences of REDD+.

Land tenure is a term with broad meaning referring to the relationship among people with respect to their use of land and its natural resources.¹⁴² Moreover, land tenure systems determine who can use what resources, for how long, and under what conditions.¹⁴³ Thus, land tenure plays an important part in social, economic, and political organizations. Brazil's vast natural resources, such as the Amazon Rainforest, and beautiful environment are under constant threat by an ever-increasing population growth in its major cities and pressing development needs to grow more food and draw upon the land's natural wealth.¹⁴⁴

Ideally, REDD+ may be able to benefit indigenous communities by generating income for them and they in turn sustainably maintain the rainforest. Indigenous peoples are vulnerable to property rights violations due to the lack of nations' enforcement of or establishment of legal frameworks.¹⁴⁵ Brazil has the established legal framework to protect indigenous peoples' rights; it has been the lack of enforcement that creates the concern. Prior to REDD+ projects being able to successfully reduce deforestation and respect

¹⁴⁰ Long (n 31) 175.

¹⁴¹ *ibid* 160.

¹⁴² A Falk, 'Land Tenure Sec. and Its Envtl. Impact in Sub-Saharan Africa' (August 2014) 20 *Int'l Envtl. and Res. Law Cmty.*, <www.americanbar.org/content/dam/aba/publications/nr_newsletters/iel/201408_iel-joint.authcheckdam.pdf> accessed October 20, 2014.

¹⁴³ *ibid*.

¹⁴⁴ *ibid* 21.

¹⁴⁵ Baez (n 9) 844.

¹⁴⁶ This may lead to poorly administered or nonexistent land governance.

indigenous territories, land tenure rights must adequately be enforced. Recognition and protection of land tenure and rights for indigenous peoples is one of the promising solutions to fix the problem of insecure land tenure.¹⁴⁶

Similar to other South American countries, indigenous territories in Brazil face constant external threats of soybean farming, illegal logging activities, and exploitation of natural resources by foreign and national companies.¹⁴⁷ When implementing REDD+ projects in Brazil, indigenous peoples face risks when engaging in REDD+, because REDD+ has the potential to restrict use of the forest to the extent that it can exclude indigenous peoples or prohibit how they traditionally use their lands.¹⁴⁸ Adequate land tenure protections for indigenous peoples can minimize these risks. In Brazil, the risk of displacement seems low for tribes that occupy lands in which have been adequately demarcated.¹⁴⁹ However, the lands that have not been demarcated are at a greater risk of exclusion.¹⁵⁰ Even if access to the forest is legally permitted, restrictions on land use can have a severely negative effect on indigenous way of life.¹⁵¹ Limited access to REDD+-protected forests could affect indigenous peoples' use of forest resources for substantive needs, depending on whether uses such as subsistence agriculture are prohibited and the particular tribe's dependence on such activities.¹⁵² These risks related to restricted land use can largely be addressed through ensuring that indigenous peoples understand and approve the terms of any agreements they enter on REDD+ by proper implementation of FPIC.¹⁵³

First, issues related to the national governments' legal ownership of indigenous lands would need to be resolved. Subsequently, an improved indigenous peoples' registration agency should make it easier, faster, and less-intimidating process for indigenous peoples to gain full autonomy and title to their property (lands they inhabit) by having better clarification of places they inhabit, better acknowledgement and enforcement of their rights in their territories, and increased land tenure security¹⁵⁴ by addressing weakness in their land laws and enforcement.¹⁵⁵ Additionally, FUNAI needs to

147 Van Dam (n 7) 402.

148 Long (n 31) 171.

149 *ibid.*

150 *ibid.*

151 *ibid.* 172.

152 *ibid.*

153 *ibid.*

154 Land tenure security refers to the notion that an individual's rights to the land will be recognized by others and protected when those rights are challenged.

155 Long (n 31) 176.

do a better job of granting adequate land ownership and control; this exists where indigenous peoples have secured full private ownership. Finally, Brazil should model their land tenure enforcement and REDD+ projects after Colombia.

For example, officially launched in October 2010, The Chocó-Darién Conservation Corridor project in Colombia is the first verified REDD+ project in South America that addresses deforestation, and is the first REDD+ project in the world to be issued credits for conservation activities carried out on a community-owned, collective land title.¹⁵⁶ In addition, this project was awarded Gold Level status in recognition for its involvement of indigenous communities.¹⁵⁷ Furthermore, the REDD+ project seeks to provide a stream of income to reinvest in the cultural identity and territorial autonomy of the indigenous Afro-descendent communities and utilize the communities' knowledge of forest management to help further the success of the project.¹⁵⁸

Similar to Colombia and according to Code REDD,¹⁵⁹ Brazil currently has three REDD+ projects in motion. Started in July 2009, the project most relevant to this discussion is The Suruí Forest Carbon Project.¹⁶⁰ This REDD+ project is an initiative led by the Metareilá Association¹⁶¹ and it seeks, while reducing greenhouse gas (GHG) emissions, to defend and preserve the autonomy and the cultural and territorial heritage of the Suruí¹⁶² people.¹⁶³ By choosing to participate in this REDD+ project, the Suruí tribe aims to ensure its ability to promote its language, culture, and identity as a forest people.¹⁶⁴ Thus, in order for Brazil to ensure that indigenous tribes' land tenure rights are adequately protected, they should model this REDD+ project after Colombia's Chocó-Darién Conservation Corridor project. It

156 'Anthrotech: Chocó-Darién Colombia' *Code redd* <www.coderedd.org/redd-project/anthrotech-choco-darien-colombia/#.VGgddodN3zI> accessed November 14, 2014.

157 *ibid.*

158 *ibid.*

159 Code REDD is a nonprofit organization whose mission is to support and scale the REDD+ mechanism to realize its full potential to empower people, preserve forests, protect wildlife, and reduce emissions.

160 'Metareilá Ass'n: Suruí Forest Amazon' *Code redd* <WWW.CODEREDD.ORG/REDD-PROJECT/METAREILA-ASSOCIATION-SURUI-FOREST/#.VGgksYdN3zJ> accessed November 15, 2014.

161 Metareilá is supported by a diverse consortium of NGOs committed to ensuring the success of the project: Forest Trends; IDESAM; Amazon Conservation Team; Kanindé; FUNBIO; Ludovino Lopes Avogados is the Suruí's legal counsel.

162 The Suruí are a tribe located in the Brazilian Amazon of roughly 1,300 members, structured in four clans, who were first contacted less than fifty years ago.

163 'Metareilá Ass'n: Suruí Forest Amazon' (n 161).

164 *ibid.*

is crucial to model this project after Colombia's because government actors may attempt to exploit some of the vague legal rules, if the indigenous protections within the Brazilian Constitution are not properly enforced, by seeking to maximize REDD+ profits without regard to indigenous rights.¹⁶⁵

Another reason Brazil should model its land tenure protections for indigenous peoples after Colombia is because, in Colombia, the magnitude of indigenous landholding has contributed to the high proportion of private forest ownership.¹⁶⁶ Thus, private ownership will lead to better land tenure security. Colombia's 1991 Constitution recognized the right of indigenous peoples to collective territories.¹⁶⁷ Moreover, it is not permissible that these indigenous territories be subdivided or transferred in whole or in part.¹⁶⁸ Furthermore, the Colombian government officially recognizes 102 different indigenous peoples in Colombia and collectively grants them title to 710 indigenous reserves.¹⁶⁹ The fact that in Article 286 of Colombia's Constitution their indigenous reserves (*resguardos*) are territorial entities like departments and municipalities helps to ensure effective land rights.¹⁷⁰ Although legislation to allow indigenous reserves to function as territorial entities in their own right has never been passed, this is still a good start and further along than Brazil's efforts.¹⁷¹

Similar to the function of FUNAI in Brazil, in order for indigenous peoples in Colombia to have legal title to the lands they inhabit, their reserves must be registered with the Colombian Institute for Agrarian Reform and 'backed up with a numbered resolution from that institution demarcating the territory.'¹⁷² Unlike Brazil, Article 93 of the Colombian Constitution gives automatic constitutional rank to all the protections preserved in human rights treaties ratified by Colombia.¹⁷³ Since Brazil also ratifies international treaties and declarations that guarantee this level of human rights protections, it should amend its Constitution after Colombia's to ensure that Brazil is fulfilling its international law commitments.

165 *ibid.*

166 Sixty-seven percent of Colombia's forest is in private (including indigenous and afro-Colombian) ownership with only 22% being publically owned. 'REDD in Colombia' (n 104).

167 These rights were extended to Afro-Colombian communities by Law 70 of 1993.

168 Constitución Política de Colombia (n 108) art. 7.

169 Over 200 of these reserved are in the Amazon. 'REDD in Colombia' (n 104).

170 *ibid.*

171 *ibid.*

172 *ibid.*

173 *ibid.*

Free, Prior, and Informed Consent

Although there has been some meaningful involvement of indigenous peoples in aspects of REDD+ policy development in Brazil, there still remain some unresolved issues that may prevent indigenous peoples' interests from being adequately integrated into REDD+ development efforts, such as their consent to the development of REDD+ in their territories.¹⁷⁴

Indigenous peoples have the right to Free, Prior, and Informed Consent (FPIC); this means they have a right "to give or withhold their Free, Prior and Informed Consent to actions that affect their lands, territories and natural resources."¹⁷⁵ Unfortunately, indigenous peoples are often taken advantage of and this right to give or withhold consent can be violated anytime there is an extensive development project that a national government wants to engage in, such as developing a mine, dam, highway, plantation or logging. Indigenous peoples are often left out of the planning and decision making process in these projects that may displace them.¹⁷⁶ Furthermore, there are concerns regarding how effectively indigenous peoples' interests can be understood regarding whether tribal leaders speak the second language sufficient enough to bind indigenous peoples to REDD+ agreements.¹⁷⁷ Therefore, these potential roadblocks need to be resolved if REDD+ is going to successfully protect indigenous peoples interests and benefit from their knowledge of the forests to promote productive management of the forests.

UNDRIP recognizes indigenous peoples' right to FPIC. More specifically, UNDRIP aims to ensure indigenous peoples have the right to be involved in any decision that affects their lands; that they have the right to give or withhold their Free, Prior, and Informed Consent; and that they have the right to reach a collective decision through processes defined and determined by themselves.¹⁷⁸ Colombia and Brazil are both signatories to this declaration.

In addition to UNDRIP, nations can include the right to FPIC into their national Constitution and laws. However, even where there are national laws that protect indigenous peoples' right to FPIC, there can still be problems. Government corruption, weak or no enforcement, or a lack of independence in government agencies responsible for ensuring that FPIC occurs as required by law, all create problems for communities trying to claim their right to FPIC.¹⁷⁹

174 Long (n 31) 161.

175 Hill (n 79) 14.

176 *ibid.*

177 Long (n 31) 162.

178 Hill (n 79) 18.

179 *ibid.*

Brazil can learn from Colombia's enforcement of indigenous peoples' right to FPIC. For example, Article 330 of Colombia's Constitution preserves the right of indigenous communities to participate in decisions regarding the potential exploitation of their territories.¹⁸⁰ Moreover, the Colombia Constitutional Court has acknowledged indigenous peoples' right to FPIC.¹⁸¹ Unlike Colombia, the Brazilian national government has historically been "overtly hostile to indigenous peoples' interests and it is unclear the extent to which the constitutional protections or administrative support of FUNAI will be able to shield them from abuse or exclusion from REDD+ benefits."¹⁸²

In addition to ILO No. 169, although both Brazil and Colombia are signatories to UNDRIP, Colombia has shown a better effort to enforce indigenous peoples' FPIC protections within it.¹⁸³ For example, the Constitutional Court has consistently upheld indigenous peoples' FPIC rights, granted by UNDRIP, and "tenaciously defended this right by overturning major pieces of legislation to reform the forestry Law 1021 of 2006, rural development Law 1152 of 2007 and mining Law 1382 of 2010 because of the lack of effective consultation."¹⁸⁴ Another safeguard Colombia has in place to ensure FPIC is respected is that Colombia has established a government agency responsible for guaranteeing the process of prior consultation on projects.¹⁸⁵ This government agency is the Prior Consultations Office, and it has effectively enforced FPIC when communities needed to be consulted on draft legislation (such as draft REDD+ regulation); indigenous peoples, along with the Minorities and Regional Affairs Office for Indigenous Communities, have led this process.¹⁸⁶ Brazil adding and enforcing these FPIC protections would demonstrate a commitment embracing an intention to ensure that indigenous peoples' rights are protected.

6. CONCLUSION

When considering climate change mitigation efforts, such as REDD+, protecting indigenous peoples' rights to the lands they inhabit is vital in order for REDD+ to work. Although this article focuses on Brazil's need to model itself after Colombia's enforcement of indigenous peoples' rights when creating an Indigenous REDD+ project, for REDD+ to work it will

180 *ibid* 20.

181 *ibid*.

182 Long (n 31) 161.

183 'REDD in Colombia' (n 104).

184 *ibid*.

185 *ibid*.

186 *ibid*.

take local farmers, national governments, and the private sector to all work together in enforcing the needs and rights of indigenous peoples and local communities to ensure these rights are respected. Furthermore, improving consultation and participation methods to include indigenous knowledge promotes a community of inclusion, respect, and partnership, safeguarding that climate change mitigation efforts are achieved with integrity. Therefore, these proposals would facilitate the creation of an Indigenous REDD+ that protects indigenous peoples' rights.